Office-Supreme Court, U.S.
FILED
MAR 18 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-695

In the Supreme Court of the United States

OCTOBER TERM, 1982

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA, APPELLANT

v.

CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING AFFIRMANCE

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QUESTION PRESENTED

Whether Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a), preempts the California Revenue and Taxation Code, insofar as it permits state authorities to levy upon an ERISA-covered employee welfare benefit plan to satisfy the state income tax liabilities of some of the plan's participants.

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INTEREST OF THE UNITED STATES

This case involves the application of the preemption provision of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. (& Supp. V) 1001 *et seq.* Section 514(a) of ERISA, 29 U.S.C. 1144 (a), provides that the federal statute "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. The Secretary of Labor is charged with the responsibility of enforcing the reporting and disclosure and the fiduciary obligations that ERISA imposes on private employee benefit plans. He therefore has a substantial interest in the proper interpretation of ERISA's broad preemption provision, which Congress enacted to promote the development of private pension and welfare plans and

to assure uniform regulation of such plans. Our participation in this case is consistent with our previous amicus filings in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), and *Kramarsky* v. *Delta Airlines, Inc.*, appeal pending, No. 81-1578 (argued Jan. 10, 1983). Moreover, in this case, appellant's position is directly contrary to an opinion letter issued by the United States Department of Labor concluding, as did the court below, that ERISA's preemption provision bars state tax levies on the assets of covered employee benefit plans.

STATEMENT

A. Statutory Background

1. Congress enacted ERISA in 1974 to promote the well-being and security of employees and their dependents by protecting their interests in employee benefit plans. 29 U.S.C. 1001(a). In addition to pension plans, the statute covers a wide range of "welfare" plans offering medical, disability, unemployment, training, vacation, and other benefits. 29 U.S.C. 1002(1). The statute broadly defines a covered "welfare plan" as "any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both * * * for the purpose of providing [such benefits] for its participants or their beneficiaries, through the purchase of insurance or otherwise * * *" (*ibid.*).

ERISA imposes certain uniform standards on the design, administration, and operation of all employee benefit plans. Every plan, for example, must be established pursuant to a written instrument, must identify the fiduciaries responsible for the plan's management, must specify the basis for payments made to and from the plan, and must have specified procedures for amending the plan and establishing a funding policy. 29 U.S.C. 1102(a) and (b). All assets of the plan, except for insurance contracts and policies, must be held in trust "for the exclusive purposes of providing benefits to partici-

pants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. (& Supp. V) 1103(a)(b) and (c). The statute requires the administrator of each plan to report and disclose certain information to the Secretary of Labor and the participants in the plan. 29 U.S.C. (& Supp. V) 1021-1031.

In addition, both welfare and pension plans are subject to federal standards for fiduciary conduct in the management of the plan and its assets. 29 U.S.C. (& Supp. V) 1104-1113. Specifically, every plan fiduciary "shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan; * * * (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter." 29 U.S.C. (& Supp. V) 1104(a)(1)(A) and (D).

Welfare plans are not subject to the participation, vesting, and funding provisions applicable to pension plans, 29 U.S.C. (& Supp. V) 1051-1086, including the provision that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. 1056(d)(1). The ERISA preemption provision, however, does apply to welfare as well as pension plans. Section 514(a) of ERISA declares that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U.S.C. 1144(a). The term "State" is defined to include "a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter." 29 U.S.C. 1144(c)(2). On January 14, 1983, Section 514 was amended to exempt from preemption Hawaii's mandatory health benefit stat-

ute, but to retain preemption of "any State *tax* law relating to employee benefit plans" (emphasis added). 29 U.S.C. 1144(b)(5), added by Pub. L. No. 97-473, Section 301 (96 Stat. 2611).

2. California Revenue & Taxation Code provides:

> The Franchise Tax Board may by notice, served personally or by first class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state * * * having in their possession, or under their control, any credits or other personal property or other things of value belonging to a taxpayer * * * to withhold, from such credits or other personal property or other things of value, the amount of any tax, interest or penalties due from the taxpayer * * * and to transmit the amount withheld to the Franchise Tax Board at such times as it may designate.

Cal. Rev. & Tax. Code § 18817 (West Supp. 1982). Any person receiving such a notice must transmit the requested amount or become personally liable. *Id.* § 18818. Moreover, the person must comply with the request "without resort to any legal or equitable action in a court of law or equity." *Id.* § 18819. The state statute provides a refund procedure for taxpayers whose taxes are collected in this manner (*id.* § 18820), but specifies no remedy for affected third parties. The third party paying the requested amount is not liable under state law to the person whose funds are transmitted to the Franchise Tax Board (*id.* § 18819).

B. Proceedings Below

Appellee Construction Laborers Vacation Trust for Southern California is a collectively-bargained employee welfare benefit plan as defined in ERISA Section 3(1), 29 U.S.C. 1002(1), established under Section 302(c) of the Labor Management Relations Act of 1947, 29 U.S.C. (Supp. V) 186(c). Employers pay a fixed sum to the

Trust for each hour worked by each employee covered by the collective bargaining agreement. The Trust holds these contributions for annual or semi-annual distribution from the vacation account established for each covered employee, under the terms of the Trust Agreement (J.A. 45). In effect, the Trust is a type of forced savings plan, or spendthrift trust, designed to insure that the participants (individual laborers) do not dissipate the vacation benefits they are eligible to receive through the Trust until they actually receive each year's lump sum payment. To this end, the Trust Agreement contains a number of provisions prohibiting alienation or garnishment of benefits, either voluntarily or by operation of law, and expressly provides that the Fund shall not be liable for the debts or liabilities of any participant or beneficiary.[1]

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[1] The anti-alienation provisions are as follows:

4.05 Neither the Associations, any individual employer, the Union, any Local Union, an employee, nor beneficiary under the Plan nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in this Trust Agreement. Neither the Fund nor any contributions to the Fund shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Associations, any individual employer, the Union, any Local Union, or any employee or beneficiary.

4.06 Each employee or beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his benefits hereunder or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize, any such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such benefit, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceedings to the fullest extent permissible by law.

9.08 It is the intent and purpose of the Plan, and of this Agreement, and a material part of the consideration for the

In 1978, appellant Franchise Tax Board of California issued notices to withhold and sought to levy upon appellee to collect delinquent California income taxes, interest and penalties owed by three Trust participants (J.S. App. 19). After requesting and receiving an advisory opinion of the United States Department of Labor concluding that the California statute authorizing such tax levies was preempted by Section 514(a) of ERISA, appellee refused to honor the tax levies (J.S. App. 20; Mot. to Dis. App. A23-27). Appellant thereupon brought a "Complaint for Failure to Honor Garnishment and for Declaratory Relief" in the Superior Court of the State of California for the County of Los Angeles. The Complaint incorporated a copy of the U.S. Department of Labor's advisory opinion and sought a declaratory judgment regarding the effect of the ERISA preemption provision on enforcement of all present and future state tax levies against the Trust (Mot. to Dis. App. A1, 6-8). Appellee removed the suit to the United States District Court for the Central District of California, which denied appellant's motion to remand (J.S. App. 17).

The district court granted the appellant's motion for summary judgment, holding that the state tax levy is not preempted by ERISA. It characterized the Department of Labor's advisory opinion to the contrary as "clearly erroneous, unreasonable, arbitrary and capricious" (J.S. App. 22). The court awarded judgment in

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making of contributions to the Fund by individual employers, that the money in each vacation account shall be received by the employee entitled thereto personally. Accordingly, no payments due the Fund and no monies in the vacation accounts established pursuant to the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any employee or any other persons and any such anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge shall be void and ineffective. The money credited to a vacation account shall be subject to withdrawal and distribution only at the times, in the manner and for the purposes specified in this Agreement.

See Mot. to Dis. App. A12-13, 17-18.

favor of appellant in the amount of $395.49 plus interest, and appellee was declared "legally obligated to honor all future levies by the Franchise Tax Board upon defendant Trust Fund in collection of tax delinquencies of the beneficiaries of defendant Trust Fund" (J.S. App. 16).

The court of appeals reversed, with one judge dissenting (J.S. App. 1-14). In holding that the state tax levy was preempted by Section 514 of ERISA, the court placed principal reliance on this Court's decision in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981). The court concluded that according such protection to welfare benefit plans is consistent with the statute and the goal of such plans to accumulate funds for the future benefit of a worker. In the court's view, "the worker's money deserves trust protection from dissipation regardless of the purpose for which the money has been set aside under ERISA" (J.S. App. 4).

SUMMARY OF ARGUMENT

1. Section 514(a) of ERISA preempts "any and all State laws [which] relate to any employee benefit plan" covered by ERISA. Here, the court below correctly held that this provision preempts the California state tax law, insofar as it authorizes a levy upon an ERISA-covered employee welfare benefit plan to collect unpaid taxes owed by plan participants.

Appellee Trust was established as a spendthrift trust for the accumulation and periodic payment of vacation benefits. It contains several provisions barring alienation or garnishment of benefits, either voluntarily or by operation of law. These anti-alienation provisions, negotiated by the parties to the trust agreement and permitted under ERISA, cannot accomplish their purpose if the state is allowed to levy upon plan assets to satisfy the tax liabilities of participants. The decision below does not defeat the ability of the state to collect the taxes owed by the plan participants. Rather, all it means is that the state cannot levy upon the assets of an ERISA-covered

plan. Hence, absent other assets of the taxpayers upon which the state can levy, it must await the periodic distribution by the plan of monies to the participants.

California's tax levy statute, as applied to appellee employee benefit plan, is analogous to the state laws preempted in *Alessi* v. *Raybestos-Manhattan, Inc.*, *supra*, and in *Kramarsky* v. *Delta Airlines, Inc.*, 666 F.2d 21 (2d Cir. 1981), appeal pending, No. 81-1578 (argued Jan. 10, 1983). None of the three state laws at issue in *Alessi*, *Kramarsky*, and the instant case, was enacted solely to regulate employee benefit plans; instead, each purported to govern other subjects, *i.e.*, workers' compensation (*Alessi*), employment discrimination (*Kramarsky*), and tax collection (in the instant case). The courts held that this indirect application was immaterial; the state laws were preempted insofar as they related to employee benefit plans. In addition, each state law had the effect of eliminating from plans certain features permitted under federal law. In *Alessi*, the feature was integration provisions with workers' compensation. In *Kramarsky*, it was treatment of pregnancy differently from other disabilities. Here, it is the anti-alienation provisions which insure that Trust monies will be expended only for the purposes established by the Trust Agreement.

The only previously reported case addressing ERISA preemption of state tax laws supports our submission here. In *National Carriers' Conference Committee* v. *Heffernan*, 454 F. Supp. 914 (D. Conn. 1978), the court held that Section 514(a) of ERISA preempted a Connecticut tax on distributions from employee welfare benefit plans. Just as a state cannot deplete the assets of an ERISA-covered employee benefit plan by directly taxing them, neither can it accomplish the same goal by levying upon the assets of such a plan to satisfy a participant's tax liability. In both instances, the state tax laws sought to be enforced "relate to" plans within the meaning of Section 514 of ERISA.

2. The legislative history of ERISA confirms Congress' intent to preempt state tax laws. Originally, the preemp-

tion provision passed by the House and Senate was narrowly cast to reach only state laws relating to subjects covered by ERISA. But the conference committee rejected this approach in favor of a broader provision preempting state laws relating to plans covered by the Act. Moreover, the conference committee specifically declined to adopt a savings provision for state tax laws even after such a provision was proposed by the Secretaries of Labor and the Treasury. Finally, in amending the preemption provision in 1983 to exempt Hawaii's mandatory health benefit statute, Congress reaffirmed that "any State tax law relating to employee benefit plans" was preempted by ERISA. Given the statutory language and the legislative history, there is no basis for an implied exception for state tax laws authorizing involuntary collection.

3. The federal preemption of state tax levies upon the assets of ERISA-covered welfare benefit plans does not violate the Tenth Amendment. As the Court recently reaffirmed in *EEOC* v. *Wyoming*, No. 81-554 (Mar. 2, 1983), slip op. 9, for such a claim to succeed the federal statute must regulate the states as states, it must address matters that are indisputably attributes of state sovereignty, and the states' compliance with the federal law must directly impair their ability to conduct traditional governmental operations.

Here, it is doubtful that appellant can satisfy any of the requirements. First, the preemption of state laws does not regulate the states as states, but simply manifests Congress' intention to bar all garnishment by creditors, both public and private, of ERISA-covered employee pension and welfare benefit plans. For the same reason, the preemption provision does not address matters that are indisputably an attribute of state sovereignty. Rather, it addresses the state in its capacity of creditor. Finally, the preemption does not impair the ability of the state to perform traditional governmental functions. Indeed, all the decision below holds is that the state cannot levy upon the assets of an employee welfare benefit plan.

There is nothing to prevent the state from exercising its levy power against the other assets of plan participants, including their annual or semi-annual receipts from the plan—once they are distributed to the participants upon dates which are readily ascertainable (see J.A. 45). In these circumstances, the enforcement of the state's tax laws will not be impaired.

ARGUMENT

SECTION 514(a) OF ERISA PREEMPTS THE CALIFORNIA STATE TAX LAW, INSOFAR AS IT AUTHORIZES A LEVY UPON AN ERISA-COVERED EMPLOYEE WELFARE BENEFIT PLAN TO COLLECT UNPAID TAXES OWED BY PLAN PARTICIPANTS

As this Court recognized in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981), ERISA rests upon an expansive principle of federal preemption of state law. In broad language, Section 514(a) of ERISA preempts "any and all State laws" which "relate to any employee benefit plan" covered by ERISA. The court below correctly held that the preemption provision bars California from levying upon an ERISA-covered employee welfare benefit plan to collect unpaid state income taxes owed by plan participants.[2] The decision below

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[2] In noting probable jurisdiction, the Court postponed consideration of jurisdiction until hearing of the case on the merits (J.A. 106).

Appellant argues (Br. 17-19) that the case was improperly removed to the district court because that court lacked jurisdiction over this suit. In appellant's view, this proceeding was commenced as an action to collect state taxes due and owing, and the provisions of ERISA were raised by appellees as a defense to the action. Appellant contends that, in these circumstances, federal jurisdiction was not established solely by the complaint and therefore the case did not "arise[] under the Constitution, laws, or treaties of the United States" (28 U.S.C. (Supp. V) 1331(a)). See also *Gully* v. *First National Bank*, 299 U.S. 109, 117 (1936) (nondeclaratory action by state tax collector does not provide federal jurisdiction where "a question of federal law is lurking in the back-

does not defeat the ability of the state to collect the taxes owed by the particular plan participants. Rather, all it means is that the state cannot levy upon the assets of an

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ground" at best); *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667 (1950) (Declaratory Judgment Act alone does not provide federal jurisdiction where plaintiff sues on a contract and neither party has separate federal cause of action).

But appellant's complaint was not grounded solely upon state law. In broadly framing its complaint for declaratory relief, appellant expressly incorporated the United States Department of Labor's advisory opinion that the levies were barred by ERISA (J.A. 7, 68-72) and urged that "a declaration by this court of the parties' respective rights is required to fully and finally resolve this controversy," with regard to all present and future tax levies (J.A. 9). Hence, the complaint discloses that this lawsuit focuses upon an issue of federal law, viz., whether Section 514 of ERISA preempts the California tax law, insofar as it authorizes a levy upon the assets of an ERISA-covered plan.

Moreover, California law does not permit the relief that is available in a federal district court, which would prevent collection of state income tax. Cal. Rev. & Tax. Code § 19081 (West 1970 & Supp. 1982). It appears well settled that a party lacking its own separate cause of action under the federal statute at issue may nonetheless bring a declaratory judgment action to clarify its status under that statute. See, *e.g.*, *Jewell Ridge Coal Corp.* v. *United Mine Workers*, 325 U.S. 161 (1945) (employer suit involving Fair Labor Standards Act); *Standard Oil Co.* v. *Agsalud*, 633 F.2d 760 (9th Cir. 1980), aff'd, 454 U.S. 801 (1981) (employer suit involving ERISA); *Arizona* v. *Atchison, T. & S. F. R.R.*, 656 F.2d 398 (9th Cir. 1981) (state's suit involving Railroad Revitalization and Regulatory Reform Act). There is even more reason to find federal jurisdiction when the defense to the proposed state cause of action is one of federal preemption. See *Conference of Federal Savings & Loan Ass'n* v. *Stein*, 604 F.2d 1256, 1259-1260 (9th Cir. 1979), aff'd mem., 445 U.S. 921 (1980); *North American Phillips Corp.* v. *Emery Air Freight Corp.*, 579 F.2d 229, 233-234 (2d Cir. 1978); *Stone & Webster Engineering Corp.* v. *Ilsley*, 3 Employee Ben. Cas. (BNA) 2141, 2144-2146 (2d Cir. Sept. 30, 1982), appeal pending, No. 82-1085. Cf. *Avco Corp.* v. *Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557 (1968) (Section 301 of Labor Management Relations Act). But see *Illinois* v. *Kerr-McGee Chemical Corp.*, 677 F.2d 571, 577-578 (7th Cir. 1982), cert. denied, No. 82-386 (Nov. 29, 1982); *Home Federal Savings and Loan Ass'n* v. *Insurance Dep't*

ERISA-covered plan. Hence, absent other assets of the taxpayers upon which the state can levy, the state must await the periodic distribution by the plan of monies to the participants.

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of Iowa, 571 F.2d 423 (8th Cir. 1978). Indeed, in *Alessi* v. *Raybestos-Manhattan, Inc.*, *supra*, this Court reached the merits of the case without addressing any jurisdictional question where the plaintiffs sued under state law and defendants removed to federal court on the ground of the ERISA preemption provision. See 451 U.S. 504, 508 (1981), aff'g 616 F.2d 1238, 1241 (3d Cir. 1980).

Finally, we do not believe that this action is barred by the Tax Injunction Act, 28 U.S.C. 1341, because the court of appeals' declaratory judgment has the effect of restraining the state's collection of taxes. See *California* v. *Grace Brethren Church*, No. 81-31, (June 18, 1982). Such relief is appropriate if no "plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. 1341. Here, the available state remedies appear to be deficient under this standard. The fiduciaries, who requested a formal opinion from the federal agency responsible for enforcing ERISA's fiduciary requirements, were advised that they would violate the federal statute if they honored the state tax levy. Yet state law required the fiduciaries to pay the tax without resort to judicial proceedings or be personally liable and they had no discernible means of recouping the tax once paid. Cal. Rev. & Tax. Code §§ 18818-18820 (West Supp. 1982). Moreover, California courts are prohibited by statute from preventing the collection of any state income tax. *Id.* § 19081. See *National Carriers' Conference Committee* v. *Heffernan*, 440 F. Supp. 1280 (D. Conn. 1977). Cf. *Rosewell* v. *LaSalle National Bank*, 450 U.S. 503 (1981) (procedure requiring payment of tax and possible refund without interest in two years is "a plain, speedy and efficient remedy"); *Tully* v. *Griffin, Inc.*, 429 U.S. 68 (1976) (state declaratory judgment remedy that allows adjudication of constitutionality issue is plain, speedy and efficient). By contrast, Congress enacted ERISA to permit the resolution of such disputes by means of suits brought by fiduciaries exclusively in federal court. 29 U.S.C. 1132(a)(3); 1132(e)(1). See, *e.g.*, *General Motors Corp.* v. *Buha*, 623 F.2d 455 (6th Cir. 1980); *AT&T Co.* v. *Merry*, 592 F.2d 118 (2d Cir. 1979); *Local 212 IBEW Vacation Trust Fund* v. *Local 212 IBEW Credit Union*, 549 F. Supp. 1299 (S.D. Ohio 1982).

In these circumstances, a "common-sense accommodation of judgment to kaleidoscopic situations" (*Gully*, *supra*, 299 U.S. at 117) would support federal jurisdiction.

A. The California tax levy relates to an employee benefit plan within the meaning of Section 514(a) of ERISA

Section 514(a) of ERISA expressly preempts "any and all State laws" which "relate to any employee benefit plan," 29 U.S.C. 1144(a). The term "employee benefit plan" is defined to include both pension plans and welfare plans; a vacation plan is one species of ERISA-covered welfare plan. 29 U.S.C. (& Supp. V) 1002(1), (2) and (3). The statute broadly defines the terms "State law" and "State" to include all state action which "purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans." 29 U.S.C. 1144(c). The only statutory exceptions to this broad preemption principle are for state laws regulating insurance, banking, or securities, or generally applicable state criminal laws. 29 U.S.C. 1144(b)(2)(A) and (4). ERISA contains no savings provision for state tax laws, which are therefore preempted insofar as they relate to employee benefit plans.

Here, pursuant to § 18817 Cal. Rev. & Tax. Code (West 1970 & Supp. 1982), the state taxing authorities have sought to levy upon the Trust for unpaid taxes of plan participants. We submit that such action interferes with the purposes of both ERISA and this particular Trust and therefore "relates to" an ERISA-covered employee benefit plan within the meaning of Section 514(a). As we shall discuss in greater detail (*infra* pp. 17-21), Congress carefully formulated the preemption provision of ERISA to encompass any state laws affecting plans in any way. But even if ERISA preempted only state laws "regulating" plans, the California tax levy statute meets that criterion. It attempts to regulate the terms and conditions of a plan by imposing specific administrative duties on the Trust, with accompanying added costs. Moreover, the state law would override an express anti-alienation provision, contained in the trust

agreement, which ERISA requires the fiduciaries to honor. 29 U.S.C. (Supp. V) 1104(a)(1)(D).

Appellee Trust was established as a spendthrift trust for the accumulation and payment of vacation benefits. It contains several provisions barring alienation or garnishment of benefits, either voluntarily or by operation of law. These anti-alienation provisions, negotiated by the parties to the trust agreement and permitted under ERISA, cannot accomplish their purpose if the state is allowed to levy upon plan assets to satisfy the tax liabilities of participants.

In enacting ERISA, Congress declared that "the continued well-being and security of millions of employees and their dependents are directly affected by [employee benefit] plans * * * and it is therefore desirable in the interests of employees and their beneficiaries * * * that minimum standards be provided assuring the equitable character of such plans and their financial soundness." 29 U.S.C. 1001(a). Vacation plans, like other welfare benefit plans, promote the well-being of employees, and the integrity of all such plans was the congressional concern that prompted passage of the Act. There is no distinction under ERISA between vacation plans and any other employee welfare benefit plan. Such plans, defined in Section 3(1) of ERISA, may provide medical, surgical, hospital, sickness, accident, disability, death, unemployment or vacation benefits, or apprenticeshp and training programs, day care centers, scholarship funds, or prepaid legal services. As a result, if Section 514 were held to permit state garnishment or tax levies against vacation plans, such a decision could well be extended to expose the assets of other benefit plans to compulsory seizure by a host of creditors, both public and private, who seek to exercise their rights under state law.

Furthermore, garnishment of the Trust assets would directly conflict with Sections 403(c)(1) and 404(a)(1)(A) and (D) of ERISA, 29 U.S.C. (Supp. V) 1103(c)(1)

and 29 U.S.C. (& Supp. V) 1104(a)(1)(A) and (D). These provisions require fiduciaries to expend trust funds for the exclusive purpose of providing benefits and defraying reasonable administrative costs, and "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this [title]." 29 U.S.C. (& Supp. V) 1103(c)(1) and 1104(a)(1)(A) and (D). Payment of plan monies to the creditor of a beneficiary violates these ERISA restrictions, as well as the specific plan provisions in this Trust; and such payment could subject the trustees to personal liability for breach of fiduciary responsibility. See 29 U.S.C. (& Supp. V) 1109 and 1132. Congress preempted state laws under Section 514(a) precisely to free plans and their trustees from such conflicting legal duties.

California's tax levy statute, as applied to employee benefit plans, is analogous to the state laws preempted in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), and in *Kramarsky* v. *Delta Airlines, Inc.*, 666 F.2d 21 (2d Cir. 1981), appeal pending, No. 81-1578 (argued Jan. 10, 1983). None of the three state laws at issue in *Alessi*, *Kramarsky*, and the instant case, was enacted solely to regulate employee benefit plans; instead, each purported to govern other subjects, *i.e.*, workers' compensation (*Alessi*), employment discrimination (*Kramarsky*), and tax collection (in the instant case). The courts held that this indirect application was immaterial; the state laws were preempted insofar as they related to employe benefit plans. In addition, each state law had the effect of eliminating from plans certain features permitted under federal law. In *Alessi*, the feature was integration provisions with workers' compensation. In *Kramarsky*, it was treatment of pregnancy differently from other disabilities. Here, it is anti-alienation provisions which insure that Trust monies will be expended only for the purposes established by

the parties to the Trust Agreement. As this Court observed in *Alessi*: [3]

> It is of no moment that New Jersey intrudes indirectly, through a workers' compensation law, rather than directly, through a statute called "pension regulations." ERISA makes clear that even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern.

451 U.S. at 525.

This Court also emphasized in *Alessi* that when a plan provision emerges from collective bargaining, as in the instant case, "the additional federal interest in precluding state interference with labor-management negotiations calls for pre-emption * * *." *Id.* at 525. "As a subject of collective bargaining, pension terms themselves become expressions of federal law, requiring preemption of intrusive state law." *Id.* at 526.

The only previously reported case addressing ERISA preemption of state tax laws supports the Secretary of Labor's interpretation in this case. In *National Carriers' Conference Committee* v. *Heffernan*, 454 F. Supp. 914

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[3] Prior to *Alessi* and *Kramarsky*, a series of decisions likewise supported a broad reading of the ERISA preemption provision. See, *e.g.*, *Hewlett-Packard Co.* v. *Barnes*, 571 F.2d 502 (9th Cir.), cert. denied, 439 U.S. 831 (1978) (preemption of California Knox-Keene Health Care Service Plan Act of 1975 as it relates to employee benefit plans); *Standard Oil Co.* v. *Agsalud*, 633 F.2d 760 (9th Cir. 1980), aff'd, 454 U.S. 801 (1981) (preemption of Hawaii Prepaid Health Care Act). Even those cases finding no preemption due to the express savings provision for state laws regulating insurance begin their analysis by recognizing that "federal preemption in the area of pensions and other employee benefit programs is virtually total." *Bell* v. *Employee Security Benefit Ass'n*, 437 F. Supp. 382, 387 (D. Kan. 1977); accord, *Wadsworth* v. *Whaland*, 562 F.2d 70, 75-77 (1st Cir. 1977), cert. denied, 435 U.S. 980 (1978).

Similarly, the state tax law in the instant case would operate to displace trust provisions Congress committed "to the discretion of pension plan designers." *Alessi* v. *Raybestos-Manhattan, Inc.*, *supra*, 451 U.S. at 525.

(D. Conn. 1978), the court held that Section 514(a) of ERISA preempted a Connecticut statute which required employee welfare benefit plans to pay an annual tax of 2.75% of the benefits paid to Connecticut residents. The court reasoned that the tax related to employee benefit plans and did not fall within any of the savings provisions, since "Congress has not excluded even general tax statutes from preemption." 454 F. Supp. at 916.[4] As the court further stated, in terms that apply equally to this case, "the Connecticut tax 'relates' to an ERISA-covered plan and is therefore within the plain meaning of the statute. Moreover, Congress rejected versions of the preemption provision limiting it to areas 'regulated' by ERISA in favor of more sweeping language." *Id.* at 917. Just as a state cannot deplete the assets of an ERISA-covered employee benefit plan by direct taxation, neither can it accomplish the same goal by levying upon the assets of such a plan to satisfy the tax liabilities of its participants. In both instances, the state tax laws sought to be enforced "relate to" plans within the meaning of Section 514—by imposing administrative obligations on plans, by taking funds that are held in trust for plan participants, and by interfering with the fiduciaries' obligations mandated by federal statute.

B. The legislative history of ERISA confirms Congress' intent to preempt state tax laws

The legislative history of ERISA confirms Congress' intent to preempt the field with respect to ERISA-covered employee benefit plans by superseding any and all state laws affecting such plans. The broad preemption language in Section 514 emerged from the Conference Committee, which deliberately rejected the narrower scope of preemption contained in the earlier House and Senate versions of the bill. The Conference Committee was con-

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[4] This conclusion was subsequently ratified by statutory amendment. See *infra* pp. 20-21.

fronted with two bills[5] which, with certain variations, took a common approach to the preemption of state laws. Under each of the earlier bills, federal preemption was limited to the substantive areas actually regulated under the legislation, and further limited to the type of plan (*i.e.*, welfare or pension) covered within any given area of the federal law.

But that selective approach to preemption was rejected. In his statement prior to Senate action on the Conference Committee bill, Senator Javits, a principal sponsor of the legislation, noted the concern of the conferees with respect to the scope of preemption found in both bills:

> Both the House and Senate bills provided for preemption of State law, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill.
>
> Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.
>
> Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs.

120 Cong. Rec. 29942 (1974).

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[5] Section 514 of H.R. 2, 93d Cong., 2d Sess. (1974), as passed by the House of Representatives on February 28, 1974, 120 Cong. Rec. 4742, 4781; Section 699 of H.R. 2, as passed by the Senate on March 4, 1974, 120 Cong. Rec. 5002, 5011.

Thus, to assure uniform regulation of plans and to eliminate the application of inconsistent state laws affecting their operation, Congress abandoned the earlier approach of limiting preemption to subject matter actually regulated, and substituted in its place an extremely broad preemption provision. The crucial change made by the Conference Committee was the preemption of state laws relating to *plans* covered by the Act, as opposed to *subjects* covered by the Act. Thus, appellant errs in arguing (Appellant's Br. 20) that Congress did not intend to preempt state laws merely "affecting" ERISA plans. On the contrary, as Congressman Dent described the conferees' intent to the House of Representatives, "the provisions of Section 514 would reach any rule, regulation, practice, or decision of any State * * * which would *affect* any employee benefit plan" covered by ERISA. 120 Cong. Rec. 29197 (1974) (emphasis added).

The only areas which Congress preserved for state regulation are those specifically enumerated in Section 514(b)(2)(A) and (4): laws regulating insurance, banking, or securities, or any generally applicable criminal law of a state.[6] State tax laws, however, are *not* included in this list of state laws saved from preemption. In fact, Congress declined to enact a savings provision for state tax laws even after such a provision was recommended by the Secretaries of Labor and Treasury to the Conference Committee considering ERISA. The proposed language declared:

> Notwithstanding the provisions of this section, a State shall have the authority to prescribe rules and regulations governing the tax qualification and taxation of contributions, distributions or income, of an employee pension plan * * *.

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[6] Section 4(b)(3) of the Act, 29 U.S.C. 1003(b)(3), also excludes from ERISA coverage plans that are maintained "solely" to comply with state unemployment, workers' compensation, or disability insurance laws.

Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 94th Cong., 2d Sess., 3 *Legislative History of the Employee Retirement Income Security Act of 1974*, App. 5147 (Comm. Print 1976). As the court explained in *National Carriers Conference Committee* v. *Heffernan*, *supra*, 454 F. Supp. at 917—

> Thus, in the face of a formal request to exempt state taxation from the narrow preemption provisions contained in the House and Senate versions of the bill, Congress not only declined the request but adopted far broader language. Although the administration proposal was directed only at state taxation of pension plans, it fairly alerted Congress to the issue of taxing welfare plans as well. Thus Congress, alerted to the taxation issue, chose not to exempt the taxing power from ERISA's broad preemption of state law.

Since the enactment of ERISA in 1974, congressional committees have held numerous hearings,[7] and various bills have been introduced to alter the scope of ERISA preemption.[8] The *Heffernan* decision was neither criticized nor overruled in Congress and, in fact, was cited with approval in 1979 by Senator Javits, one of the original co-sponsors of ERISA in the Senate and an architect of its broad preemption language. 125 Cong. Rec. 947 (1979). Not until 1983 did Congress act to amend ERISA's preemption language at all, and then it specifically endorsed the preemption of state tax laws under Section 514(a).

That amendment, Section 301 of Pub. L. No. 97-473, 96 Stat. 2611, signed on January 14, 1983, provides in pertinent part:

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[7] See, *e.g.*, *Oversight of ERISA, 1977: Hearings on S. 2125 Before the Subcomm. on Labor of the Senate Comm. on Human Resources*, 95th Cong., 1st Sess. 561-575, 650-691 (1977).

[8] See, *e.g.*, S. 209, 96th Cong., 1st Sess. (1979); 125 Cong. Rec. 937 (1979).

(a) EXEMPTION FROM PREEMPTION.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

(B): *Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—*

(i) *any State tax law relating to employee benefit plans* * * * (emphasis added).

The purpose of this amendment was to exempt Hawaii's experimental, mandatory health benefit statute from the preemptive reach of Section 514(a), but not to exempt any state tax law relating to employee benefit plans. Indeed, the Conference Report specified that the latter category of state laws would continue to be preempted.[9] This reconfirms that Congress intended to preempt all state tax laws insofar as they relate to employee benefit plans.

C. The statutory preemption of state laws relating to pension plans is likewise applicable to employee welfare benefit plans

As we have shown, the preemption rule of Section 514 applies to both pension and welfare plans. Appellant, however, contends (Br. 23-25) that ERISA preempts only garnishment of pension plans. It relies on Section 206(d)(1) of the Act, which provides that "[e]ach pension plan shall provide that benefits provided under the

[9] The Conference Report explained as follows: "The provision generally exempts the Hawaii Prepaid Health Care Act from preemption by ERISA. Under the provision, however, preemption is continued with respect to * * * any State tax law relating to employee benefit plans * * *." H.R. Rep. No. 97-984, 97th Cong., 2d Sess. 18 (1982).

plan may not be assigned or alienated." 29 U.S.C. 1056(d)(1). The identical provision in Section 401(a)(13) of the Internal Revenue Code of 1954 (26 U.S.C.) has been interpreted in a Treasury Regulation to prohibit both voluntary assignments and alienation of benefits by participants, and attachment, garnishment or levy by operation of law. Treasury Regulations (1954 Code), 26 C.F.R. 1.401(a)-13(b)(1). This interpretation is supported by the legislative history, and most courts have held that private creditors may not garnish pension benefits under Section 206(d)(1) of ERISA.[10]

Appellant argues (Br. 32-33) that the specific anti-alienation provision of Section 206(d)(1) of ERISA for pension plans demonstrates that there is no similar restriction for welfare plans. But that fact does not undercut our submission that Section 514 preempts state law regarding garnishment of assets of any employee benefit plans. The legislative history shows that early versions of the anti-alienation provision were included in bills reported out of both House and Senate committees, well before the Conference Committee adopted the broad preemption language enacted in Section 514.[11] These anti-alienation provisions were designed to ensure that vested pension benefits would not be lost. S. Rep. No. 93-127, 93d Cong., 1st Sess. 39 (1973).

Section 514, in contrast, preempts state laws relating to both pension and welfare plans. As a result, Section

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[10] *General Motors Corp.* v. *Buha*, 623 F.2d 455 (6th Cir. 1980); *Commercial Mortgage Ins. Inc.* v. *Citizens Nat'l Bank*, 526 F. Supp. 510 (N.D. Tex. 1981); *Peoples Finance Co.* v. *Saffold*, 83 Ill. App. 3d 120, 403 N.E.2d 765 (1980); *Helmsley-Spear, Inc* v. *Winter*, 74 A.D.2d 195, 426 N.Y.S.2d 778 (1980); contra, *Nat'l Bank of North America* v. *IBEW Local #3*, 69 A.D.2d 679, 419 N.Y.S.2d 127 (1979), appeal dismissed as moot, 48 N.Y.2d 752, 397 N.E.2d 1333, 422 N.Y.S.2d 666 (1979).

[11] See S. 4 as reported by the Senate Committee on Labor and Public Welfare, S. Rep. No. 93-127, 93d Cong., 1st Sess. 123-124 (1973), and H.R. 12481 as reported by the House Committee on Ways and Means, H.R. Rep. No. 93-779, 93d Cong., 2d Sess. 77-78 (1974).

514(a) prohibits tax levies and garnishments on assets of plans by operation of law, but does not reach voluntary assignments by plan participants. This means voluntary assignments of welfare plan benefits are not prohibited by ERISA per se, although they may be contrary to plan provisions which fiduciaries are bound to follow under Section 404(a)(1)(D) of ERISA.[12] Accordingly, Section 206(d)(1) does not abrogate in any way the broad preemptive effect of Section 514 for both pension and welfare plans.[13]

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[12] The distinction between voluntary and involuntary assignment of welfare benefits under ERISA is illustrated by a Department of Labor Interpretive Bulletin permitting voluntary assignment of vacation plan benefits under certain conditions. 29 C.F.R. 2509.78-1. Such payments are permissible—

> * * * if the arrangement pursuant to which payments are made does not constitute a prohibited transaction under ERISA and:
>
> (1) The plan documents expressly state that benefits payable under the plan to a participant or beneficiary may, at the direction of the participant or beneficiary, be paid to a third party rather than to the participant or beneficiary;
>
> (2) The participant or beneficiary directs in writing that the plan trustee(s) shall pay a named third party all or a specified portion of the sum of money which would otherwise be paid under the plan for him or her; and
>
> (3) A payment is made to a third party only when or after the money would otherwise be payable to the plan participant or beneficiary.

None of these three conditions is present in this case because (1) plan documents prohibit, rather than permit, such an assignment; (2) there is no evidence suggesting that the three affected participants directed the Trust in writing to pay their tax bills; and (3) the Tax Board is not purporting to limit its garnishment claims to those times when vacation benefits would otherwise be payable to plan participants. See *Marshall* v. *Davis*, 517 F. Supp. 551 (W.D. Mich. 198[illegible]) (upholding 29 C.F.R. 2509.78-1); cf. *Monsanto Co.* v. *Ford*, 534 F. Supp. 51 (E.D. Mo. 1981) (pension benefits cannot be garnished for family support when not in "pay status").

[13] For the same reason, the fact that Congress has included anti-alienation provisions in other federal pension statutes does

Electrical Workers Credit Union v. *IBEW NECA Holiday Trust Fund*, 583 S.W.2d 154 (Mo. 1979), upon which appellant relies (Br. 31-32), is no longer a viable precedent in light of this Court's decision in *Alessi*. There, the Holiday Trust at issue before the Missouri courts was a vacation plan similar in structure and purpose to the Trust in the instant case, and contained a similar "spendthrift" provision barring assignment to or garnishment by any creditor of a beneficiary. Although the Missouri Supreme Court acknowledged that garnishment of pension benefits would be barred by Section 206(d)(1), it concluded that garnishment of a vacation plan's assets was not preempted by Section 514. In so holding, the court noted that ERISA's regulation of welfare plans is much less comprehensive than its regulation of pension plans, and that the anti-alienation provision in Section 206(d)(1) applies solely to pension plans. Accordingly, the Missouri court characterized the state garnishment law as falling within the "narrow category of [state] laws which affect employee benefit plans but * * * do not relate to them within the meaning of § 1144(a)." *Electrical Workers Credit Union*, *supra*, 583 S.W.2d at 158. See also *Local 212 IBEW Vacation Trust Fund* v. *Local 212 IBEW Credit Union*, 549 F. Supp. 1299, 1302 (S.D. Ohio 1982) (following the dissent in the court below).

But this analysis, previously advanced in *Gast* v. *Oregon*, 36 Or. App. 441, 585 P.2d 12 (1978), upon which the Missouri court relied, has subsequently been discredited by this Court in *Alessi* and by the Second Circuit in *Kramarsky*. Section 514 does not distinguish between the two categories. Although Congress left more to the discretion of plan designers in the area of welfare plans, it consciously chose to displace state laws relating

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not, as appellant contends (Br. 22-23), suggest that state garnishment laws apply to ERISA welfare benefit plans. Cf. *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979) (Railroad Retirement Act of 1974).

to both pension and welfare plans, in order to achieve uniformity and encourage voluntary participation. There is accordingly no basis for applying the preemption provision differently for pension and welfare plans merely because Congress chose to regulate pension plans more comprehensively.

Finally, appellant (Br. 26-28) relies on a line of cases which have found a limited implied exception to ERISA's preemption and pension anti-alienation provisions to permit garnishment of plan benefits to satisfy family support and community property obligations contained in a state divorce decree. *AT & T Co.* v. *Merry*, 592 F.2d 118 (2d Cir. 1979); *Stone* v. *Stone*, 450 F. Supp. 919 (N.D. Cal. 1978), aff'd, 632 F.2d 740 (9th Cir. 1980), cert. denied, 453 U.S. 922 (1981); *Carpenters Pension Trust* v. *Kronschnabel*, 632 F.2d 745 (9th Cir. 1980), cert. denied, 453 U.S. 922 (1981). See also *In re the Marriage of Campa*, 89 Cal. App. 3d 113, 152 Cal. Rptr. 362 (1979), appeal dismissed, 444 U.S. 1028 (1980) (state marriage dissolution decree requiring trustees of a pension plan to divide payments between employee and ex-spouse not preempted). Unlike the tax levy in the instant case, however, the implied exception for family support obligations is consistent with the purposes of ERISA. "Members of the families of employees are included in the class which ERISA protects," a factor which distinguishes the claims of non-employee spouses from those of business or other creditors. *Stone* v. *Stone*, *supra*, 450 F. Supp. at 926. As Congress expressly declared in enacting ERISA, "the continued well-being and security of millions of employees *and their dependents* are directly affected by the plans." Section 2(a), 29 U.S.C. 1001(a) (emphasis added). ERISA was designed to protect the interests of employees and their families. For purposes of ERISA preemption, the claims of state tax authorities are no different from those of any other creditors; both are outside the class of interests ERISA was enacted to protect. Accordingly, there is no basis for an

implied exception for state tax collection, especially in light of Congress' explicit reference in the recent amendment to "any State tax law relating to employee benefit plans" as within the scope of the preemption provision (see *supra* p. 21).[14]

D. The federal preemption of state tax levies upon the assets of ERISA-covered welfare benefit plans does not violate the Tenth Amendment

Finally, for the first time in this litigation, appellant argues (Br. 35-37) that interpreting Section 514 of ERISA to preempt state tax levies upon employee welfare benefit plans violates the Tenth Amendment because it would interfere with the state's power to assess and uniformiy collect its taxes. In support of its contention, appellant relies upon *National League of Cities* v. *Usery*, 426 U.S. 833 (1976).

But as this Court pointed out in *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 277-278 (1981) (emphasis in original; citations omitted), and reaffirmed in *EEOC* v. *Wyoming*, No. 81-554 (Mar. 2, 1983), slip op. at 9—

> [I]n order to succeed, a claim that congressional commerce power legislation is invalid under the reasoning of *National League of Cities* must satisfy *each* of three requirements. First, there must be a showing that the challenged statute regulates the 'States as States.' Second, the federal regulation must address matters that are undisputably 'at-

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[14] Appellant correctly points out (Br. 15) that the Internal Revenue Service is allowed to levy against plan assets under Section 6334(a) of the Internal Revenue Code of 1954 (26 U.S.C.). See Mot. to Dis. App. 26-27. This is not, however, inconsistent with our view that state tax levies are prohibited. While ERISA preempts all state statutes, it expressly preserves all federal statutes. See Section 514(d), 29 U.S.C. 1144(d).

> tribute[s] of state sovereignty.' And third, it must be apparent that the States' compliance with the federal law would directly impair their ability 'to structure integral operations in areas of traditional governmental functions.'

Here it is doubtful that appellant can satisfy any of the requirements. First, the preemption of state tax laws does not regulate the states as states, but simply manifests Congress' intention to bar all garnishment by creditors, both public and private, of ERISA-covered pension and employee welfare benefit plans. For the same reason, the preemption provision does not address matters that are undisputably an attribute of state sovereignty. Rather, it addresses the state in its capacity of creditor. Finally, the preemption does not impair the ability of the state to perform traditional governmental functions. Although appellant argues that the construction of ERISA adopted by the court below would impair its ability to collect taxes, there is nothing on the record to support that assertion. Indeed, all the decision below holds is that the state cannot levy upon the assets of an employee welfare benefit plan. There is nothing in the decision that would prevent the state from exercising its levy power against other assets of delinquent participants or which excuses the plan participants from their legal obligation under the state tax law. Accordingly, enforcement of the state's tax laws is not impaired.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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MARCH 1983

☆ U. S. GOVERNMENT PRINTING OFFICE: 1983 401218 1505